

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MADISON ANDERSON,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

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UNPUBLISHED

August 9, 2005

No. 253090

Wayne Circuit Court

LC No. 02-238532-CZ

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Madison Anderson appeals as of right from the trial court's orders granting summary disposition for defendant Ford Motor Company in this employment discrimination case. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Anderson has worked for Ford for over fifty years, and has been in his current position of industrial wastewater operator since 1979. Anderson, who is black, filed suit alleging a hostile work environment and disparate treatment due to racial discrimination. Anderson's complaint included multiple incidents of conduct by fellow employees including having garbage placed in his chair; being told, in profane terms, to shut his mouth; being stared down in a menacing way for over forty-five minutes; and having his chair locked in an office when others' chairs were available for use.

Anderson also stated that he received a reprimand and warning for being reported away from his job, but according to Anderson, the person who allegedly observed his absence was never identified. Anderson received a three-day suspension without pay that was reportedly due to untreated wastewater mixing with treated wastewater and being released, but Anderson stated that such event did not occur; rather, there was a malfunction with the computer readouts. Finally, Anderson claimed that he was not given instruction for one year on how to use a new computer survey system to request and receive overtime.

The trial court dismissed both counts of Anderson's complaint after two separate motions for summary disposition under MCR 2.116(C)(8) and (C)(10).

## II. Summary Disposition

### A. Standard Of Review

We review de novo the trial court's ruling on a motion for summary disposition.<sup>1</sup>

### B. Legal Standards

Summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim and permits summary disposition to be granted when the allegations pleaded fail to state a legal claim.<sup>2</sup> The reviewing court assumes "that all factual allegations in the nonmoving party's pleadings are true and determine[s] if there is a legally sufficient basis for the claim."<sup>3</sup>

Summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim.<sup>4</sup> Summary disposition is proper when there is no genuine issue as to any material fact.<sup>5</sup> "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."<sup>6</sup> When a motion under (C)(10) is made and supported, "[a]n adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial."<sup>7</sup>

### C. Hostile Work Environment

To establish a prima facie case of discrimination based on a hostile work environment, a plaintiff must show that: (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of that protected status; (3) the employee was subjected to unwelcome conduct or communication involving that protected status; (4) the unwelcome conduct was intended to or did in fact substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior.<sup>8</sup> With respect to the second element, the plaintiff must show that but for the fact of his protected class, he would not have been the object of harassment.<sup>9</sup>

In the present case, Anderson's pleadings failed to show that any of the conduct or activities complained of were incurred because of his race, or would not have occurred but for

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<sup>1</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

<sup>2</sup> *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

<sup>3</sup> *Salinas v Genesys Health Sys*, 263 Mich App 315, 317; 688 NW2d 112 (2004).

<sup>4</sup> *Radtke*, *supra* at 374.

<sup>5</sup> See *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

<sup>6</sup> *Id.*

<sup>7</sup> *Meyer v Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000).

<sup>8</sup> *Radtke*, *supra* at 382-383; *Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996).

<sup>9</sup> *Radtke*, *supra* at 383.

his race. Therefore, the pleadings cannot establish a prima facie case of hostile work environment, and the trial court properly granted summary disposition based on MCR 2.116(C)(8).

#### D. Disparate Treatment

Anderson's second claim is one of discrimination leading to disparate treatment. A prima facie case of discrimination can be shown when similarly situated employees are treated differently than the plaintiff.<sup>10</sup> When disparate treatment is the framework for a discrimination claim, "a plaintiff may establish a prima facie case of prohibited discrimination by demonstrating that the plaintiff suffered an adverse employment action under circumstances giving rise to an inference of discrimination."<sup>11</sup>

All discrimination claims include an adverse employment action as a necessary element.<sup>12</sup> An adverse employment action in the context of discrimination claims "(1) must be materially adverse in that it is more than 'mere inconvenience or an alteration of job responsibilities,' and (2) must have an objective basis for demonstrating that the change is adverse, rather than the mere subjective impressions of the plaintiff."<sup>13</sup> A materially adverse employment action may include actions such as "termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities . . . ."<sup>14</sup>

Anderson provided two incidents of discipline and an allegation that he was singled out due to his race concerning the use of the overtime computer survey. The first disciplinary incident Anderson cited was an allegation of being "off the job" that led to disciplinary action in the form of a reprimand and warning, without loss of pay. Such an action does not constitute a materially adverse employment action because there was no consequence to or alteration of his pay, status, or responsibilities.<sup>15</sup>

The second disciplinary incident involved the overflow of untreated wastewater into treated wastewater, which led to a three-day suspension without pay. Ford provided a legitimate nondiscriminatory reason for the employment action that Anderson did not counter before the trial court. Further, Anderson did not show that any other wastewater operator had ever been in a similar situation or was treated differently in such situation. In a motion for summary disposition under MCR 2.116(C)(10), Anderson, as the nonmoving party, cannot rest on the

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<sup>10</sup> *Smith v Goodwill Industries of West Michigan*, 243 Mich App 438, 448; 622 NW2d 337 (2000).

<sup>11</sup> *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 359; 597 NW2d 250 (1999).

<sup>12</sup> See *id.* at 362.

<sup>13</sup> *Meyer, supra* at 569.

<sup>14</sup> *Wilcoxon, supra* at 363.

<sup>15</sup> See *id.*

allegation or denials in his pleadings. Instead Anderson was required to “set forth specific facts showing that there is a genuine issue for trial.”<sup>16</sup>

Similarly, Anderson did not set forth any specific facts in response to an affidavit from Ford, which stated that instructions on how to use the overtime computer survey were posted only ten feet from the computer. There was no evidence to show that Anderson was singled out regarding access to or the use of the computer survey because of his race.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

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<sup>16</sup> *Meyer, supra* at 574.